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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,666	03/05/2002	Casey O'Hara	VT0309-US1	3831
24473	7590	03/01/2005	EXAMINER	
STEVEN M MITCHELL PACESETTER INC 701 EAST EVELYN AVENUE SUNNYVALE, CA 94086			SCHAETZLE, KENNEDY	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 03/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/092,666

Applicant(s)

O'HARA

Examiner

Kennedy Schaetzle

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3 and 9-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9,14-17 and 23 is/are allowed.
- 6) ☒ Claim(s) 1,3,10-13,18 and 20-22 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 21 is objected to because of the following informalities: a text omission appears on line 3. The examiner will assume that it was the applicant's intent to insert the word "header" prior to the word "has." Appropriate correction is required.

### ***Specification***

2. The disclosure is objected to because of the following informalities: as stated in paragraph 2 the previous Office Action, the description of Fig. 5 as having a header supported on a fourth orthogonal side appears to be in error for the same reasons given in reference to Fig. 4. The examiner will assume it was the applicant's intent to refer to a three-sided orthogonal arrangement when discussing Fig. 5. With regards to the description of Fig. 8, it would appear to be more accurate to state that the header is supported on 5 of 6 sides, rather than saying that the header is supported on 5 of 6 orthogonal sides.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –  
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 10, 11, 18, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanchez-Zambrano (Pat. No. 5,895,414).

Regarding claim 1 and the limitation regarding the use of a flat body having a peripheral edge including a straight edge portion, with the recess defined at an intermediate portion of the straight edge portion, according to Merriam-Webster's online dictionary, the adjective flat connotes "...having the major surfaces essentially parallel

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and distinctly greater than the minor surfaces <a *flat* piece of wood> **b of a *heel*** : very low and broad.” By this definition, the body of the Sanchez-Zambrano housing is flat (note col. 1, lines 58-63). Self-evident from Fig. 1 the housing has a peripheral edge including a straight edge portion (the portion of the recess containing the feedthroughs). The recess can be “defined” at an intermediate portion of the straight edge (e.g., at this point the recess is symmetric about a line perpendicular to the intermediate portion of the straight edge, or the bottom of the recess lies along the straight edge, etc., etc.).

Regarding claim 10, the examiner considers the area of the housing in the region of the side mounting portions 37 to include corner portions having a selected radius of curvature less than that of at least another portion of the peripheral edge (e.g., the curved edge representing the bottom portion of the housing as best seen in Fig. 1). The recess containing the top mounting portion 33 is positioned away from the corner portion. Related comments apply to claim 20.

Regarding claim 11, the radius of curvature of the portion of the housing defining the bottom of the recess (i.e., the portion containing the feedthroughs) has a lower degree of curvature than the more substantially curved edges of the housing outside the recess (e.g., the edges associated with the side mountings 37). Related comments apply to claim 18.

### ***Claim Rejections - 35 USC § 102/103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 12, 13 and 21 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sanchez-Zambrano (Pat. No. 5,895,414).

Concerning claim 3, although Sanchez-Zambrano does not explicitly refer to or show the recess as being defined through the entire thickness of the housing, it is

disclosed that the pacemaker housing 11 has a uniform thickness with a smooth taper near the periphery (col. 1, lines 58-63). Furthermore, the housing 11 is considered by Sanchez-Zambrano to include top mounting portion 33 with mounting means 35 (note for example claim 1). In order for the pacemaker housing to have a uniform thickness and permit one to suture the device to body tissue through mounting means 35, the recess would have to be defined through the entire thickness of the housing (i.e., forming a flush surface). In any event, the use of a flush surface recess would have been considered an obvious design choice to maximize patient comfort by eliminating sharp edges and to simplify the manufacturing process.

Regarding claims 12 and 21, similar comments to those made above in the rejection of claim 3 with respect to the flush header faces apply here as well. Also note the discussion of flat bodies above in reference to claim 1. Limitations pertaining to the header are clearly seen in Fig. 1.

Regarding claim 13, note the comments made in the rejection of claim 12. The examiner further considers the single surface of the Sanchez-Zambrano header that does not abut the housing recess to be the external portion receiving the lead pins.

#### ***Allowable Subject Matter***

7. Claims 9, 14-17 and 23 are allowed.

Reasons for allowance of claim 9 and its critical feature have been given in the previous Office Action.

Regarding claim 14, the prior art of record fails to teach a housing recess having recess surfaces abutting the header in at least three orthogonal directions. Applicants give criticality to this feature in the specification (note the first full paragraph of page 16). It should additionally be noted that the examiner considers Fig. 5 of the present application to show this feature (not Fig. 4).

Regarding claim 23, the prior art of record fails to disclose a recess including at least a pair of parallel opposed surfaces between which a header is received. Such an arrangement would appear to result in a more secure header.

8. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Comments paralleling those given for the allowability of claim 14 apply here as well.

### ***Response to Amendment***

9. The declaration filed on December 10, 2004 under 37 CFR 1.131 is sufficient to overcome the Ruben et al. reference.

10. The examiner wishes to further point out that the facsimile transmissions received December 10, 2004 are of such poor quality that numerous characters have been blanked out. While suitable for examination purposes, the applicant may wish to remedy this problem prior to any publishing date by submitting more readable copies.


### ***Conclusion***

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kennedy Schaetzle whose telephone number is 571 272-4954. The examiner can normally be reached M-W and F from 9:30 -6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached M-F at 571 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KJS

  
KENNEDY SCHAETZLE  
PRIMARY EXAMINER  
2/26/05